CHAPTER 111
FINANCIAL ASSURANCE REQUIREMENTS FOR MUNICIPAL SOLID WASTE LANDFILLS

567—111.1(455B) Purpose. The purpose of this chapter is to implement Iowa Code sections 455B.304(8) and 455B.306(8) by providing the criteria for establishing financial assurance for closure, postclosure care and corrective action at municipal solid waste landfills.

567—111.2(455B) Applicability. The requirements of this chapter apply to all owners and operators of municipal solid waste landfills (MSWLF) except owners or operators who are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

567—111.3(455B) Financial assurance for closure.

111.3(1) The owner or operator must have a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the MSWLF in accordance with the closure plan as required by 567—subrules 103.2(13) and 102.12(10). Such estimate must be available at any time during the active life of the landfill. The owner or operator must submit to the department by April 1 of each year the estimate and financial assurance documentation.

a. The cost estimate must equal the cost of closing the MSWLF at any time during the active life of the facility when the extent and manner of its operation would make closure the most expensive.

b. During the active life of the MSWLF, the owner or operator must annually adjust the closure cost estimate for inflation.

c. The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or MSWLF conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

d. The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by subrule 111.3(3) and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

111.3(2) The owner or operator of an MSWLF must establish financial assurance for closure in accordance with the criteria in this chapter. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with 567—subrules 103.2(13) and 102.12(10). A certification of compliance must be submitted by the owner or operator each year by April 1 and approved by the department.

111.3(3) The owner or operator of a sanitary landfill must verify that adequate financial assurance is in place in regard to closure. In order to comply with this rule, the owner or operator must comply with the following procedures:

a. The owner or operator shall submit a complete copy of the financial assurance instrument or the documents that establish the financial assurance instrument each year by April 1. The documents submitted shall contain, but are not limited to, the amount of the financial assurance, the annual financial statement and financial plan required by Iowa Code sections 455B.306(8)*"e"* and 455B.306(6)*"c,"* and the current balances of the closure and postclosure accounts required by Iowa Code section 455B.306(8)*"b."* Nothing in this requirement shall require the duplicative submission of information otherwise submitted in order to comply with the requirements of this chapter.

b. The owner or operator shall submit, each year by April 1, a complete updated copy of the estimate, certified by an Iowa-licensed professional engineer, that forms the basis for the amount of financial assurance held by the owner or operator.

c. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the third-party estimate.

d. The third-party estimate submitted to the department must account for at least the following factors determined by the department to be minimal necessary costs for closure:

(1) Closure and postclosure plan document revisions;
(2) Site preparation, earthwork and final grading;
(3) Drainage control culverts, piping and structures;
(4) Erosion control structures, sediment ponds and terraces;
(5) Final cap construction;
(6) Cap vegetation soil placement;
(7) Cap seeding, mulching and fertilizing;
(8) Monitoring well, piezometer and gas control modifications;
(9) Leachate system cleanout and extraction well modifications;
(10) Monitoring well installations and abandonments;
(11) Facility modifications to effect closed status;
(12) Engineering and technical services;
(13) Legal, financial and administrative services; and
(14) Closure compliance certifications and documentation.

e. The cost estimates contained in the third-party estimate of closure costs must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

f. The owner or operator shall submit yearly, by April 1, proof of compliance with this chapter as follows:

(1) For publicly owned municipal solid waste landfills, the owner or operator shall submit to the department a copy of the owner or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

(2) Privately held municipal solid waste landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this chapter. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

567—111.4(455B) Financial assurance for postclosure care.

111.4(1) The owner or operator must have a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct postclosure care for the MSWLF in compliance with the plan developed pursuant to 567—subrules 103.2(14) and 102.12(10). The cost estimate must account for the total cost of conducting postclosure care, as described in the plan, for the entire postclosure care period. The owner or operator must submit to the department by April 1 of each year the estimate and financial assurance documentation.

a. The cost estimate for postclosure care must be based on the most expensive costs of that care during the entire postclosure care period.

b. During the active life of the MSWLF and during the postclosure care period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

c. The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or MSWLF conditions increase the maximum cost of postclosure care.

d. The owner or operator may reduce the amount of financial assurance for postclosure care if the most recent estimate of the maximum cost of postclosure care beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by subrule 111.3(3) and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

111.4(2) The owner or operator of an MSWLF must establish financial assurance for the costs of postclosure care required by 567—subrules 103.2(14) and 102.12(10). The owner or operator must provide continuous coverage for postclosure care until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. A certification of compliance must be submitted by the owner or operator annually by April 1 and approved by the department.

111.4(3) The owner or operator of a sanitary landfill must verify that adequate financial assurance is in place in regard to postclosure. In order to comply with this rule, the owner or operator must comply with the following procedures:

a. The documents submitted shall contain, but are not limited to, the amount of the financial assurance, the annual financial statement and financial plan required by Iowa Code sections 455B.306(8)*"e"* and 455B.306(6)*"c,"* and the current balances of the closure and postclosure accounts required by Iowa Code section 455B.306(8)*"b."* Nothing in this requirement shall require the duplicative submission of information otherwise submitted in order to comply with the requirements of this chapter.

b. The owner or operator shall submit, each year by April 1, a complete updated copy of the estimate, certified by an Iowa-licensed professional engineer, that forms the basis for the amount of financial assurance held by the owner or operator.

c. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the third-party estimate.

d. The third-party estimate submitted to the department must account for at least the following factors determined by the department to be minimal necessary costs for closure:

(1) General site facilities, access roads and fencing maintenance;
(2) Cap and vegetative cover maintenance;
(3) Drainage and erosion control systems maintenance;
(4) Groundwater to waste separation systems maintenance;
(5) Gas control systems maintenance;
(6) Gas control systems monitoring and reports;
(7) Groundwater and surface water monitoring systems maintenance;
(8) Groundwater and surface water quality monitoring and reports;
(9) Groundwater monitoring systems performance evaluations and reports;
(10) Leachate control systems maintenance;
(11) Leachate management, transportation and disposal;
(12) Leachate control systems performance evaluations and reports;
(13) Facility inspections and reports;
(14) Engineering and technical services;
(15) Legal, financial and administrative services; and
(16) Financial assurance, accounting, audits and reports.

e. The cost estimates contained in the third-party estimate of postclosure care costs must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

f. The owner or operator shall submit yearly, by April 1, proof of compliance with this chapter as follows:

(1) For publicly owned municipal solid waste landfills, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

(2) Privately held municipal solid waste landfills shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this chapter. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

567—111.5(455B) Financial assurance for corrective action.

111.5(1) An owner or operator required to undertake corrective action pursuant to 567—subrules 103.2(4) through 103.2(9), inclusive, must have a detailed written estimate prepared by an Iowa-licensed professional engineer, in current dollars, of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of departmental approval of the corrective action plan.

a. The owner or operator must annually adjust the estimate for inflation until the corrective action program is completed.

b. The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action program or MSWLF conditions increase the maximum cost of corrective action.

c. The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

111.5(2) The owner or operator of an MSWLF required to undertake a corrective action program must establish financial assurance for the most recent corrective action program by one of the mechanisms prescribed in 567—111.6(455B) and, if necessary, one of the mechanisms prescribed in 567—111.7(455B). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

a. Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by an Iowa-licensed professional engineer.

b. Upon departmental approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

567—111.6(455B) Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code section 455B.306(8)*"a"* must ensure that the funds necessary to meet the costs of closure, postclosure care, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in subrules 111.6(1) to 111.6(9).

111.6(1) *Trust fund.*

a. An owner or operator may demonstrate financial assurance for closure, postclosure, and corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 111.3(3) and 111.4(3) and placed in the facility's official files.

b. Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the MSWLF, whichever is shorter, in the case of a trust fund for closure or postclosure care, or over one-half of the estimated length of the corrective action program in the case of response to a known release. This period is referred to as the pay-in period.

c. For a trust fund used to demonstrate financial assurance for closure and postclosure care, the first payment into the fund must be at least equal to the current cost estimate for closure or postclosure care divided by the number of years in the pay-in period as defined in 111.6(1)*"b."* The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{CE - CV}{Y}$$

where CE is the current cost estimate for closure or postclosure care (updated for inflation or other changes), CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

d. For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in 111.6(1)*"b."* The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

e. The initial payment into the trust fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department.

f. The owner or operator, or other person authorized to conduct closure, postclosure care, or corrective action activities may request reimbursement from the trustee for these expenditures, including partial closure, as they are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure care, or corrective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

g. The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternate financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

h. After the pay-in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimates and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

111.6(2) *Surety bond guaranteeing payment or performance.*

a. An owner or operator may demonstrate financial assurance for closure or postclosure care by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury.

b. The penal sum of the bond must be in an amount at least equal to the current closure and postclosure or corrective action cost estimate, whichever is applicable.

c. Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to 111.6(2)*"f."*

d. The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of subrule 111.6(1) except the requirements for initial payment and subsequent annual payments specified in 111.6(1)*"b"* through *"e."*

e. Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

f. Under the terms of the bond, the surety may only cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternate financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust of a sum equal to the amount of the bond. If the owner or operator has not complied with this rule within the 60-day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120-day notice period, that such a failure has occurred.

g. The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this chapter. A failure to comply with 111.6(2)*"f"* shall also constitute a failure to perform under the terms of the bond.

h. Liability under the bond shall be for the duration of the operation, closure, and postclosure period.

i. The owner or operator may cancel the bond only if alternate financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

111.6(3) *Letter of credit.*

a. An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this subrule. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

b. A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

c. The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the current cost estimate for closure, postclosure care or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has cancelled the letter of credit by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternate financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into the closure and postclosure accounts established pursuant to Iowa Code section 455B.306(8)*"b."* If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the closure and postclosure accounts established by the owner or operator pursuant to Iowa Code section 455B.306(8)*"b."* The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner and operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

d. The owner or operator may cancel the letter of credit only if alternate financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

111.6(4) *Insurance.*

a. An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action by obtaining insurance which conforms to the requirements of this subrule. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

b. The closure or postclosure care insurance policy must guarantee that funds will be available to close the MSWLF unit whenever final closure occurs or to provide postclosure care for the MSWLF unit whenever the postclosure care period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or postclosure care, up to an amount equal to the face amount of the policy.

c. The insurance policy must be issued for a face amount at least equal to the current cost estimate for closure or postclosure care, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

d. An owner or operator, or any other person authorized to conduct closure or postclosure care, may receive reimbursements for closure or postclosure expenditures, including partial closure, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure care, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

e. Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

f. The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternate financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into the closure and postclosure accounts established pursuant to Iowa Code section 455B.306(8)*"b."* If the owner or operator has not complied with this subrule within the 60-day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subrule within the 60-day period shall make the insurer liable for the closure and postclosure care of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

g. For insurance policies providing coverage for postclosure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week treasury securities.

h. The owner or operator may cancel the insurance only if alternate financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

111.6(5) *Corporate financial test.* An owner or operator that satisfies the requirements of this subrule may demonstrate financial assurance up to the amount specified below:

a. Financial component. The owner or operator must satisfy the requirements of 111.6(5)*"a"*(1), (2), and (3) to meet the financial component of the corporate financial test.

(1) The owner or operator must satisfy one of the following three conditions:

1. A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or

2. A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or

3. A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

(2) The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

1. The sum of the current closure, postclosure care, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus $10 million except as provided in 111.6(5)*"a"*(2)"2"; or

2. Net worth of $10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements provided all of the current closure, postclosure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and subject to the approval of the department; and

(3) The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure care, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in 111.6(5)*"e."*

b. Record-keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility's official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department:

(1) A letter signed by a certified public accountant and based upon a certified audit that:

1. Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by rules 567—111.3(455B) to 567—111.5(455B); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and

2. Provides evidence demonstrating that the firm meets the conditions of 111.6(5)*"a."*

(2) A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternate financial assurance that meets the requirements of this chapter.

(3) If the certified public accountant's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies 111.6(5)*"a"* that differs from data in the audited financial statements referred to in 111.6(5)*"b"*(2), then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed-upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

(4) If the certified public accountant's letter provides a demonstration that the firm has assured for environmental obligations as provided in 111.6(5)*"a"*(2)"2," then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and how these obligations have been measured and reported, and that the tangible net worth of the firm is at least $10 million plus the amount of any guarantees provided.

c. The owner or operator may cease the submission of the information required by subrule 111.6(5) only if alternate financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

d. The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of 111.6(5)*"a,"* at any time require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in 111.6(5)*"b."* If the department finds that the owner or operator no longer meets the requirements of 111.6(5)*"a,"* the owner or operator must provide alternate financial assurance that meets the requirements of this chapter.

e. Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure care, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in subrule 111.6(5), the owner or operator must include cost estimates required for 567—111.3(455B) to 567—111.5(455B); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

111.6(6) *Local government financial test.* An owner or operator that satisfies the requirements of this subrule may demonstrate financial assurance up to the amount specified below:

a. Financial component.

(1) The owner or operator must satisfy one of the following requirements:

1. If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's on all such general obligation bonds; or

2. The owner or operator must satisfy each of the following financial ratios based on the owner's or operator's most recent audited annual financial statement:

- A ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05; and
- A ratio of annual debt service to total expenditures less than or equal to 0.20.

(2) The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Basis of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

(3) A local government is not eligible to assure its obligations in subrule 111.6(6) if it:

1. Is currently in default on any outstanding general obligation bonds; or

2. Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or

3. Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

4. Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under 111.6(6)*"a"*(2). A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

(4) The following terms used in this paragraph are defined as follows:

1. "Deficit" means total annual revenues minus total annual expenditures;

2. "Total revenues" means revenues from all taxes and fees but does not include the proceeds from borrowing or asset sales, excluding revenue from funds managed by local government on behalf of a specific third party;

3. "Total expenditures" means all expenditures excluding capital outlays and debt repayment;

4. "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions; and

5. "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

b. Public notice component. The local government owner or operator must include disclosure of the closure and postclosure care costs assured through the financial test into its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Government Accounting Standards Board Statement 18 ensures compliance with this public notice component.

c. Record-keeping and reporting requirements.

(1) The local government owner or operator must submit to the department the following items:

1. A letter signed by the local government's chief financial officer that:

- Lists all the current cost estimates covered by a financial test, as described in 111.6(6)*"d"*;
- Provides evidence and certifies that the local government meets the conditions of 111.6(6)*"a"*(1), (2), and (3); and
- Certifies that the local government meets the conditions of 111.6(6)*"b"* and 111.6(6)*"d"*; and

2. The local government's annual financial report indicating compliance with the financial ratios required by 111.6(6)*"a"*(1)"2," if applicable, and the requirements of 111.6(6)*"a"*(2) and 111.6(6)*"a"*(3)"3" and "4" and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

(2) The items required in 111.6(6)*"c"*(1) must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial mechanism, in the case of closure and postclosure care; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

(3) After the initial submission of the items and placement in the facility's official files, the local government owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner or operator's fiscal year.

(4) The owner or operator may cease the submission of the information required by subrule 111.6(6) only if alternate financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

(5) A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternate assurance has been obtained.

(6) The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government at any time. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternate financial assurance in accordance with this rule.

d. Calculation of costs to be assured. The portion of the closure, postclosure care, and corrective action costs which an owner or operator may assure under this subrule is determined as follows:

(1) If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure care, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

(2) If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure care, and corrective action costs it seeks to assure under this subparagraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

(3) The owner or operator must obtain an alternate financial assurance instrument for those costs that exceed the limits set in 111.6(6)*"d"*(1) and (2).

111.6(7) *Corporate guarantee.*

a. An owner or operator may meet the requirements of this rule by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, a firm whose parent corporation is also the parent corporation of the owner or operator, or a firm with a "substantial business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in subrule 111.6(5) and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from a certified public accountant and accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is a firm with a ''substantial business relationship'' with the owner or operator, this letter must describe this ''substantial business relationship'' and the value received in consideration of the guarantee.

b. The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure care; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

c. The terms of the guarantee must provide that:

(1) If the owner or operator fails to perform closure, postclosure care, or corrective action of a facility covered by the guarantee, or fails to obtain alternate financial assurance within 90 days of notice of intent to cancel pursuant to 111.6(7)*"c"*(2) and (3), the guarantor will:

1. Perform, or pay a third party to perform, closure, postclosure care, or corrective action as required (performance guarantee);

2. Establish a fully funded trust fund as specified in subrule 111.6(1) in the name of the owner or operator (payment guarantee); or

3. Obtain alternate financial assurance as required by 111.6(7)*"c"*(3).

(2) The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this chapter unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

(3) If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to subrule 111.6(1). If the owner or operator fails to comply with the provisions of this subparagraph within the 90-day period, the guarantor must provide that alternate financial assurance prior to cancellation of the corporate guarantee.

d. If a corporate guarantor no longer meets the requirements of subrule 111.6(5), the owner or operator must, within 90 days, obtain alternate financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternate financial assurance within the 90-day period, the guarantor must provide that alternate financial assurance within the next 30 days.

e. The owner or operator is no longer required to meet the requirements of subrule 111.6(7) upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

111.6(8) Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in subrule 111.6(6) and must comply with the terms of a written guarantee.

a. Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

(1) If the owner or operator fails to perform closure, postclosure care, or corrective action of a facility covered by the guarantee or fails to obtain alternate financial assurance within 90 days of notice of intent to cancel pursuant to 111.6(7)*"c"*(2) and (3), the guarantor will:

1. Perform, or pay a third party to perform, closure, postclosure care, or corrective action as required; or

2. Establish a fully funded trust fund as specified in subrule 111.6(1) in the name of the owner or operator; or

3. Obtain alternate financial assurance as required by 111.6(8)*"a"*(3).

(2) The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the state director as evidenced by the return receipts.

(3) If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to subrule 111.6(1). If the owner or operator fails to comply with the provisions of this subparagraph within the 90-day period, the guarantor must provide that alternate financial assurance prior to cancellation of the guarantee.

b. Record-keeping and reporting requirements.

(1) The owner or operator must submit to the department a certified copy of the guarantee along with the items required under 111.6(6)*"c"* and place a copy in the facility's official files record before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department.

(2) The owner or operator shall no longer be required to submit the items specified in 111.6(8)*"b"*(1) when proof of alternate financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this chapter.

(3) If a local government guarantor no longer meets the requirements of subrule 111.6(6), the owner or operator must, within 90 days, submit to the department proof of alternate financial assurance. If the owner or operator fails to obtain alternate financial assurance within that 90-day period, the guarantor must provide that alternate financial assurance within the next 30 days.

111.6(9) *Local government dedicated fund.* The owner or operator of a publicly owned MSWLF or local government serving as a guarantor may demonstrate financial assurance for closure, postclosure care, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this subrule. A dedicated fund will be considered eligible if it complies with *"a"* or *"b"* below, and all other provisions of this subrule, and documentation of this compliance has been submitted to the department.

a. The fund is dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure care, or corrective action costs, whichever is applicable, arising from the operation of the MSWLF and is funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage; or

b. The fund is dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and is funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

c. Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the remaining life of the MSWLF, whichever is shorter, in the case of a dedicated fund for closure or postclosure care, or over one-half of the estimated length of an approved corrective action program in the case of a response to a known release. This is referred to as the "pay-in period." The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure care or no later than 120 days after the corrective action plan has been approved by the department.

d. For a dedicated fund used to demonstrate financial assurance for closure and postclosure care, the first payment into the fund must be at least equal to the current cost estimate, divided by the number of years in the pay-in period as defined in this subrule. The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{TF} - \text{CF}}{\text{Y}}$$

where TF is the total required financial assurance for the owner or operator, CF is the current amount in the fund, and Y is the number of years remaining in the pay-in period.

e. For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one-half of the current cost estimate, divided by the number of years in the corrective action pay-in period as defined in this subrule. The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{RB} - \text{CF}}{\text{Y}}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay-in period.

567—111.7(455B) General requirements.

111.7(1) Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this rule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this chapter and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure care, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two firms are consolidated.

111.7(2) Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this rule for multiple MSWLFs by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure care, or corrective action, whichever is applicable, for all MSWLFs covered.

111.7(3) Criteria. The language of the financial assurance mechanisms listed in this chapter must ensure that the instruments satisfy the following criteria:

a. The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure care, or corrective action for known releases, whichever is applicable;

b. The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

c. The financial assurance mechanisms must be obtained by the owner or operator or prior to the initial receipt of solid waste and no later than 120 days after the corrective action remedy has been approved by the department until the owner or operator is released from the financial assurance requirements; and

d. The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

111.7(4) No permit shall be issued by the department pursuant to Iowa Code section 455B.305 unless the applicant has demonstrated compliance with 567—Chapter 111.

These rules are intended to implement Iowa Code sections 455B.304 and 455B.306.

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